

## **9 FAM 42.62 Procedural Notes**

*(TL:VISA-191; 05-07-1999)*

### **9 FAM 42.62 PN1 Preparing for Appointment with Applicant**

*(TL:VISA-59; 5-15-92)*

a. When appearing at the appointed time for the formal visa application, an applicant is entitled to receive prompt attention. The post should pull and review the following prior to the appointment, preferably the preceding day:

(1) Form OF-224(B), Immigrant Visa Control Card, and Form OF-230 I, Application for Immigrant Visa and Alien Registration, Part I, Biographic Data, or IVACS printout; and

(2) Any documents that may have been filed in the A-Z file.

b. The consular officer shall send unclassified material to the document checker for review. The consular officer shall review classified material.

### **9 FAM 42.62 PN2 Class Namechecks for Immigrant Visa Applicants**

*(TL:VISA-162; 2-24-97)*

The post must namecheck all immigrant visa applicants on the CLASS system. Although the National Visa Center (NVC) performs a preliminary CLASS check on applicants before sending files to posts abroad, the consular officer should update this clearance by performing a final CLASS check immediately prior to the applicant's interview date.

### **9 FAM 42.62 PN3 U.S. Criminal Records Checks**

#### **9 FAM 42.62 PN3.1 Namechecking Applicants Through the FBI**

*(TL:VISA-162; 2-24-97)*

a. All immigrant visa applicants over the age of 16 must be checked for U.S. criminal records. The NVC will perform this clearance through its online access to the FBI's National Crime Information Center-Interstate Identification Index (NCIC-III).

b. The NVC will namecheck beneficiaries of petitions passing through the NVC on NCIC-III before ending their files to a consular post abroad. If there is an NCIC-III record that may match the applicant, the NVC will include the report with the visa file.

### **9 FAM 42.62 PN3.2 Namechecks for Beneficiaries of Petitions Filed Abroad and Derivative Beneficiaries**

(TL:VISA-191; 05-07-1999)

The NVC does not do namechecks for beneficiaries of petitions filed at an INS office or consular post abroad. *The NVC also does not conduct NCIC namechecks on derivative beneficiaries whose names are not included on the petition.* In these cases, the visa processing post must cable the NVC with a request for an NCIC-III check. Posts should make requests using the "VISAS HAWK" format [see 9 FAM PART IV Appendix E, 302 ]. Consular officers cannot issue an immigrant visa before receiving a response to its clearance request.

### **9 FAM 42.62 PN3.4 Using NCIC-III Index Records**

(TL:VISA-162; 2-24-97)

a. The NCIC-III is only an index of criminal and arrest records. It will not provide information on the contents of a criminal record. An NCIC-III check will list up to 15 possible matches with the applicant's name and date of birth. For each possible match, post will receive an "index record" listing the name, date of birth, aliases and physical description from the criminal record.

b. The FBI will only release the contents of a criminal record after making a positive identification by fingerprint. Therefore, when an NCIC-III check generates an index record, the consular officer must submit the applicant's fingerprints to the FBI to determine whether the NCIC-III hit is a positive match, and to obtain the contents of the criminal record. If the fingerprints identify the applicant as the subject of the criminal record, the FBI will forward to post a criminal history summary, commonly called a rap sheet.

c. If the physical description on the index record is clearly incompatible with the applicant, and the consular officer is satisfied the index record does not refer to the applicant, the officer can process the case to conclusion without submitting fingerprints.

d. Not all criminal records on file with the FBI refer to crimes that would render an applicant ineligible for a visa. Nor will all rap sheets list the final disposition of an arrest or charge. The applicant may need to provide additional information before a determination of visa eligibility can be made.

e. See 9 FAM 42.67 Notes for instructions on taking and submitting fingerprints.

## **9 FAM 42.62 PN3.5 Security of NCIC-III Information**

(TL:VISA-162; 2-24-97)

a. Consular officers should clearly mark unclassified information received from NCIC-III or fingerprint clearances "Law Enforcement Sensitive." Consular officers should allow only employees with a "need to know" access to this information. Consular officers should store "Law Enforcement Sensitive" information in a secure area.

b. Posts can disseminate "Law Enforcement Sensitive" information to the INS or other posts only when the information is necessary for the administration or enforcement of U.S. law. This would permit dissemination in reference to future visa applications.

c. For further information, posts should refer to the Bureau of Diplomatic Security Guide *Requirements for the Protection of NCIC Criminal History Information as Law Enforcement Sensitive*.

## **9 FAM 42.62 PN3.6 NCIC Name Check Validity**

(TL:VISA-191; 05-07-1999)

*Posts need not update the NCIC name checks unless there is an indication that the alien has been in the United States since the last check. If consular officers have any doubt, posts should err on the side of doing the check.*

## **9 FAM 42.62 PN4 Functions Preliminary to Interview**

### **9 FAM 42.62 PN4.1 Initial Duties of Document Checker**

(TL:VISA-59; 5-15-92)

When the applicant presents the documents, the post must check the documents for completeness and legibility. The document checker should ensure each question on Form OF-230 I and II, Application for Alien Registration and Immigrant Visa, has been answered. If a question does not apply, posts should write "not applicable" or "NA" in the space for the answer. (For example, some questions do not apply to small children. Posts should not use dashes or Xs (except when marking "yes-no" boxes). If Form OF-230 is illegible or incomplete, the document checker shall return it to the applicant for completion or give the applicant a new form to be completed legibly. If necessary, the document checker should assist the applicant in completing the application.

## **9 FAM 42.62 PN4.2 Paying Application Fee**

*(TL:VISA-59; 5-15-92)*

a. When the medical forms and other documents have been placed in logical order and the Form OF-230 I and II is complete and legible, the alien shall take the form to the cashier and pay the application fee. The alien must pay before the interview. [See 9 FAM 42.62 PN4.2 below.] In situations described in 9 FAM 42.67 N1.1-1, the cashier shall not collect a new application fee.

b. After the fee has been paid, the document checker shall give the documents, including Form OF-230 I and II, the medical forms, Form OF-224(B) or IVACS printout and any papers from the A-Z file to the consular officer who will interview the applicant.

## **9 FAM 42.62 PN5 Interview Even if Documentation is Missing**

*(TL:VISA-59; 5-15-92)*

a. In addition to the inconvenience and expense caused to the alien (particularly an alien applying with family members), it is generally inefficient for the post if an application is not taken and the interview not conducted on the appointment date. In a busy post, the number of daily interviews is set to maximize the use of space and personnel. A canceled interview results in a gap in that day's productivity without gain, since the interview must be rescheduled for another day. In addition, there is no guarantee that the alien will be found eligible the second time around. Rescheduling causes administrative backlogs, which, in turn, result in lost time answering correspondence and responding to telephone inquiries.

b. As a general rule, therefore, consular officers should accept applications from and interview all applicants appearing on the appointed date. If an applicant fails to present all of the required documentation, the applicant should nevertheless pay the application fee and be interviewed by the consular officer who must then refuse the application under INA 221(g). The consular officer should tell the applicant or a member of the family to mail or bring in the missing documentation, and also the issuance fee, and make clear that the visa(s) will be issued immediately if the documentation is found acceptable. In rare instances, the consular officer may decide not to collect the fee and interview the applicant, but only a consular officer may make this decision. Generally, permitting such a decision to be made by anyone else would be an abdication of the officer's responsibilities.

## **9 FAM 42.62 PN6 Completing Form OF -230 in Language Other Than English**

*(TL:VISA-59; 5-15-92)*

To assist the INS, when an applicant completes Form OF-230 I and II in a language other than English, the following items must appear on the applicant's Form OF-230 I and II in the manner indicated:

- (1) Age—in Arabic numerals;
- (2) Occupation—translated into English;
- (3) Final address in the United States—translated into English unless the Latin alphabet is used;
- (4) Past places of residence—translated into English unless the Latin alphabet is used;
- (5) Claim of exemption from exclusion—completed in English;
- (6) Parents' name—in English version of name; and
- (7) Any explanations or amplification of yes-no questions or any other questions—must be in English. (The document checker should normally make these translations on Form OF-230 I and II.)

## **9 FAM 42.62 PN7 Importance of U.S. Address**

*(TL:VISA-59; 5-15-92)*

INS uses the address stated on the Form I-230 as the alien's final destination to mail the Form I-551, Permanent Resident Card, to the visa recipient. It is important, therefore, that the alien furnish as complete an address as possible, including zip code. The alien may use the address of a prospective employer if there are no friends or relatives to whom Form I-551 may be forwarded.

## **9 FAM 42.62 PN8 Visa Interview**

*(TL:VISA-3; 8-30-87)*

The interview with the consular officer is the most significant part of the visa issuing process. It is particularly important from the point of view of full and correct application of the law.

## **9 FAM 42.62 PN8.1 Action Concerning Form OF-230 and Original Form OF-233, Consular Cash Receipt**

*(TL:VISA-59; 5-15-92)*

The consular officer should request from the applicant Form OF-230 I and II and the original Form OF-233 (cash receipt) issued by the cashier for the application fee. The consular officer shall initial and return Form OF-233 to the applicant.

## **9 FAM 42.62 PN8.2 Explaining Significance of Oath to Applicant**

*(TL:VISA-59; 5-15-92)*

At the outset of the interview, the consular officer should inform the applicant that the interview will be based on answers given to the questions on Form OF-230 I and II, and any others that might arise from examination of the supporting documents. The consular officer should make it clear that, after the interview is ended, the applicant will be required to swear or affirm that all statements made during the interview and on the form are true. The consular officer should also inform the applicant of the significance of such oath or affirmation. The consular officer may, in this connection, refer to Section 1001 of Title 18, U.S.C., which provides a penalty for making a false statement or using a false document in any matter within the jurisdiction of any department or agency of the U.S. Government.

## **9 FAM 42.62 PN8.3 Establishing Alien Understands Contents of Form OF-230 I and II**

*(TL:VISA-59; 5-15-92)*

The consular officer should next establish that it was the applicant who furnished the answers to the questions on Form OF-230 I and II or, if assisted by someone else, that the applicant nevertheless is fully aware of the nature of the application and the answers given and has no questions about the application. In most cases, the consular officer can accomplish this by asking the applicant a few of the questions on the form and comparing the oral responses with the written replies. Should the applicant appear to have inadequate knowledge of the contents of the application, the officer must orally go over all questions having a bearing on the applicant's eligibility to receive a visa. To discourage professional intermediaries from coaching applicants, officers should avoid establishing a set pattern in questioning applicants.

## **9 FAM 42.62 PN8.4 Correcting Form OF-230 I and II in Distinctive Ink**

*(TL:VISA-59; 5-15-92)*

a. If any answers on Form OF-230 I and II need correction or amplification, the officer should make the corrections in ink of a distinctive color, marking each correction with a circled number for identification. The consular officer shall then expand on the applicant's declaration immediately before the place for signature by writing in the same color ink the following:

**"The corrections numbered 1 through \_\_\_\_\_ are part of my application."**

b. The consular officer may use a rubber stamp for this purpose.

## **9 FAM 42.62 PN8.5 Sources of Background Investigation Information Not Revealed**

*(TL:VISA-59; 5-15-92)*

The consular officer must ensure that interviews be conducted so as to persuade the applicant to make full and frank disclosure of all information bearing on the application without disclosure by the officer of the actual sources of information obtained during the course of background investigations.

## **9 FAM 42.62 PN8.6 Consular Officer's Responsibility in Labor Certification Cases**

*(TL:VISA-59; 5-15-92)*

If the applicant is applying for a visa on the basis of a job offer labor certification, or a Schedule A case not previously evaluated by the consular officer, the officer must determine that the applicant has the professional or occupational qualifications on which certification is based.